

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 09-25-02 Item 3.c.

File Number
CPA 01-105-01

Application Type
Conditional Use Permit Amendment

Council District
8

Planning Area
Evergreen

Assessor's Parcel Number(s)
491-02-057

STAFF REPORT

PROJECT DESCRIPTION

Completed by: John W. Baty

Location: Northeast corner Tully Road and Capitol Expressway

Gross Acreage: 8.39

Net Acreage: 8.39

Net Density: n/a

Existing Zoning: CP - Commercial Pedestrian

Existing Use: Vacant

Proposed Zoning: No change

Proposed Use: Addition to a previously approved automobile dealership

GENERAL PLAN

Completed by: JB

Land Use/Transportation Diagram Designation
Neighborhood/Community Commercial

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and
Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: JB

North: Thompson Creek/Lake Cunningham Park

A – Agricultural

East: Thompson Creek/Lake Cunningham Park

R-1-8 – Residence District

South: Tully Road/Commercial Center

CP Commercial Pedestrian

West: Capitol Expressway/Vacant/Reid-Hillview Airport

IP – Industrial Park

ENVIRONMENTAL STATUS

Completed by: JB

☒ Addendum to Environmental Impact Report
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☐ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: JB

Annexation Title: Johnson No. 4

Date: February 3, 1962

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☒ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision
☐ _____

Date: _____

Approved by: _____

☒ Action
☐ Recommendation

OWNER

Rayjer Properties, LLC
2092 Lower Lake
Santa Ana, CA 92705

APPLICANT/DEVELOPER

Raymond Beshoff
House of Imports
6862 Manchester Boulevard
Buena Park, CA 90621

ENGINEER

Tom Armstrong,
HMH, Inc.
P.O. Box 611510
San Jose, CA 95161-1510

PUBLIC AGENCY COMMENTS RECEIVEDCompleted by: JB

Department of Public Works
See Attached Traffic Memo

Other Departments and Agencies

GENERAL CORRESPONDENCE

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Rayjer Properties, is requesting a Conditional Use Permit Amendment to allow the addition of 9,691 square feet to a previously approved 64,395 square foot automobile dealership for a total of 74,086 square feet on 8.39 acres.

The property was the originally the subject of a Conditional Use Permit, CP00-09-068, which was approved on May 9, 2001 to allow a 60,273 square foot commercial/office center comprised of three buildings. The buildings had consisted of a drive-through restaurant, a sit-down restaurant and offices. The project was, however, not implemented.

More recently, the property was the subject of a Conditional Use Permit, CP01-12-105, which was approved on January 23, 2002 to allow a 64,395 square foot automobile dealership and a 4,700 square foot “sit-down” restaurant. The approved project included the sale of used cars as an incidental use, as well as vehicle-related repair and service within a fully enclosed building. Elements of this project are presently under construction. The proposed Conditional Use Permit Amendment does not affect the previously approved future 4,700 square foot restaurant.

The subject property has a zoning designation of CP- Commercial Pedestrian. A Conditional Use Permit is required in the CP-Commercial Pedestrian District for automobile dealerships. In addition a Conditional Use Permit is required in the CP Commercial Pedestrian district for individual uses or tenants that exceed 15,000 square feet.

Surrounding land uses include Thompson Creek and Lake Cunningham Park to the north and east. An approved commercial center (File No. CP98-12-060) is located across Tully Road to the south. Eastridge Mall is located to the southwest of the property across Tully Road and Capitol Expressway. Reid-Hillview Airport and other vacant parcels are located to the west across Capitol Expressway.

Project Description

The proposed 9,691 square foot addition to the previously approved 64,295 square foot automobile sales and service facility represents a minor physical expansion to the previously approved project and does change the intensity of the use. The subject proposal does not significantly affect the previously approved footprint and location of the approved buildings. The previously approved service building remains in the same location with a small first floor addition and a larger second floor mezzanine addition for parts storage within the building. The approved sales building includes additional first floor square footage

while reducing second floor area. A larger 4,900 square foot car wash building replaces the previously approved 850 square foot car wash building located behind the service building.

The proposed project maintains the site layout and circulation pattern approved under the previous Conditional Use Permit. The automobile dealership proposal, to be occupied by Mercedes-Benz, retains the previously approved two-story showroom building that parallels, and is oriented primarily towards, Capitol Expressway. A 57 bay vehicle service building, presently under construction, is located behind the sales building and will comprise the primary element along the Tully Road streetscape. This building will also provide screened rooftop parking for new car inventory as previously approved.

Parking for outdoor sales inventory of new and used cars, along with a strip of perimeter landscaping, will separate the two buildings from the street. A fenced parking area, located at the easterly end of the site will be used to store vehicles awaiting service, employee vehicles and excess new car inventory.

The site will have access from a signalized intersection on Tully Road just east of Capitol Expressway that will be aligned with the entrance to the approved commercial center to the south. Other driveways, facilitating right-turn ingress/egress movements will be provided along the project's two street frontages.

A small interim sale and service facility, approved under the previous Conditional Use Permit, is located near the easterly end of the site. The structures will be removed upon completion of the proposed permanent buildings.

The previous Conditional Use Permit was approved with a condition that nine (9) specific project design issues, which were not fully explored with the previous Conditional Use Permit, be addressed with the issuance of one or more subsequent Permit Adjustments. These included, but were not limited to, such issues as enhancements to the architecture for minor areas of the building, clarification of project design details and modifications to landscaped areas. This Amendment addresses all but one of the previously identified design modification requirements, which is addressed in the analysis below.

ENVIRONMENTAL REVIEW

The Planning Commission certified an Environmental Impact Report for the original commercial project on April 25, 2001. The issues identified in this EIR included potential impacts to Burrowing Owls, the riparian corridor and traffic. An addendum to the adopted EIR addressed the key issues specifically related to the previously approved automobile dealership facility proposal. The subject Conditional Use Permit Amendment was also designed to include and comply with all of the recommended mitigation requirements of the previous EIR.

The original EIR concluded that impacts to Burrowing Owl nesting and foraging habitat are a significant unavoidable impact. The Commission adopted a Statement of Overriding Consideration, related to the issue of Burrowing Owl impacts.

The automobile dealership project did not further affect or reduce the impacts to burrowing owls. The proposed changes, under this amendment, involve minor additions to, and within, existing buildings over existing paved areas and construction of a new car wash building over a previously approved paved area.

As agreed to by the applicant, under the conditions of the previous approval, mitigation measures are included in the project to lessen the impact to burrowing owls. These measures include a pre-construction survey and acquisition of burrowing owl foraging and nesting habitat. This mitigation, however, would not be sufficient to reduce the impacts to less than significant levels.

A second addendum was prepared to document the potential environmental impacts associated with this amendment to address the increase in overall square footage from the previously approved project. This addendum addressed potential traffic/circulation, noise, visual and lighting impacts.

Traffic

A Transportation Impact Analysis (TIA) report was included in the Final EIR in November of 2000 for CP00-09-068, an office/restaurant development. The analysis for the office/restaurant project showed significant transportation Level of Service (LOS) impacts on four area intersections during the PM peak hour: Capitol Expressway/Ocala Avenue, Capitol Expressway/Capitol Avenue, White Road/Quimby Road, and Tully Road/White Road. The Final EIR identified mitigation measures that were included in the approved project.

A supplemental analysis was prepared in January of 2002 for CP01-12-105, the approved automobile dealership and sit-down restaurant. The analysis prepared for the automobile dealership and the sit-down restaurant project would generate fewer peak hour trips and would only impact one of the four intersections identified in the Final EIR: Capitol Expressway/Ocala Avenue. Mitigation was included in the approved project.

A supplemental traffic analysis was prepared in September 2002 to evaluate the traffic impacts associated with the increase in size of the automobile dealership as proposed under this project (CPA01-105-01). The analysis showed that the currently proposed project, including the previously approved restaurant, would have an impact at two of the four intersections identified in the Final EIR: Capitol Expressway/Ocala Avenue, Capitol Expressway/Capitol Avenue.

The measures necessary to mitigate the project's impacts at these intersections is as follows:

- Capitol Expressway/Ocala Avenue – The addition of a second northbound left-turn lane would improve the Capitol Expressway/Ocala Avenue intersection operations to LOS D and mitigate the project's impacts at this intersection to less than a significant level.
- Capitol Expressway/Capitol Avenue –The restriping/reconfiguration of the westbound Capitol Avenue approach to provide two exclusive left-turn lanes, one shared through/left-turn lane, and one right-turn lane will improve the level of service from LOS F to E and mitigate the project's impact at this intersection.

This supplemental traffic analysis and recommendation was reviewed and accepted by the Director of Public Works. The recommended traffic mitigation measures are included in the project. The proposed project conforms to the City of San José Transportation Level of Service Policy and to the City's Evergreen Area Development Level of Service Policy.

Based on the evaluations in the second addendum to the Final EIR, it is concluded that the proposed changes in the project would not result in any new environmental impacts, nor would the magnitude of previously identified environmental impacts be substantially different from those associated with the previously approved project. There are no new significant environmental impacts from this project.

GENERAL PLAN CONFORMANCE

The proposed commercial uses are consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of Neighborhood/Community Commercial. This site was the subject of a General Plan Amendment in 1998, which changed the designation from Combined Industrial/Commercial to the present designation. An automobile dealership is an allowed use in the Neighborhood/Community Commercial General Plan designation.

ANALYSIS

The key issues analyzed for the proposed project include: 1) site design & conformance to the Commercial Design Guidelines, and 2) architecture.

Site Design and Conformance to the Commercial Design Guidelines

The proposed changes with this Amendment do not affect the project's compliance with the Commercial Design Guidelines for automobile dealerships with respect to setbacks, site organization, building design, screening of service yards, and landscaping. In fact, minor improvements to the original design are proposed under this permit to improve upon these elements.

The previous CUP identified nine (9) relatively minor subsequent project design modification requirements to address with a subsequent adjustment prior to the issuance of Building Permits. All of the requirements have been satisfactorily resolved and incorporated in the project plans, except an improved site design layout/orientation of the future restaurant facility.

The proposed plan shows a slightly different site design for the location and orientation of the future sit-down restaurant, which is different from what was shown in the previous CUP plan set. The design as currently proposed does not address the permit condition in the previous Conditional Use Permit, nor the intent of the design modifications that were discussed in the previous staff report. As proposed, the restaurant will share a common driveway with the dealership as shown. However, the intermingling of automobile dealership parking with restaurant parking, as shown on plan, is not appropriate. Allowing the intermingling of parking would frustrate the ability of the restaurant to establish an identity separate from the dealership. Further, the development of two dead end parking aisles establishes a less than ideal parking circulation design for the project. Staff has discussed design modifications with the applicant to achieve an appropriate site layout. The applicant has indicated a willingness to work with staff to appropriately resolve this issue. Therefore, Staff is

recommending that this Amendment retain the condition for a subsequent permit adjustment to finalize the restaurant building design and site layout.

Architecture

With the exception of the new, larger car wash building, the buildings that comprise the automobile dealership remain virtually the same as approved under the previous CUP. A Permit Adjustment was issued after the automobile dealership CUP to improve the street elevation of the service building. This Amendment incorporates the architectural details that were approved under this adjustment.

The larger car wash building is designed to continue the basic architectural theme from the sales building and the service building although with a lesser degree of detailing and articulation. The car wash building is positioned behind the service building and behind the screened service area parking lot with little visibility from off-site. Future landscape improvements and riparian corridor planting will further screen the car wash building.

PUBLIC OUTREACH

A notice of the public hearing was distributed to the owners and tenants of all properties located within 1000 feet of the project site.

RECOMMENDATION

The Planning staff recommends approval of the requested Conditional Use Permit and that the Planning Commission approve a resolution with the findings and conditions stated below:

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Neighborhood/Community Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CP-Commercial Pedestrian Zoning District.
3. The proposed automobile dealership consists of 74,086 square feet of building area comprised of three buildings; a 23,585 square foot showroom/office building, a 45,601 square foot service building, and a 4,900 square foot car wash building.
4. The proposed additional square footage to the automobile dealership does not affect the previously approved 4,700 square foot “quality-sit-down-only” restaurant.
5. The project proposes 181 parking spaces that meet minimum Zoning Ordinance parking requirements for the various functions related to automobile dealerships.
6. The proposed building square footage would be contained within areas previously identified and approved for building or paved areas.
7. The proposed project is adjacent to Thompson Creek and proposes to meet the minimum

required riparian setback defined in the Environmental Impact Report (EIR).

8. A high-pressure gas pipeline bisects the proposed project site.
9. Only low occupancy buildings are proposed near the pipeline and are setback greater than 15 feet.
10. An Environmental Impact Report has been adopted for the previously approved project which indicates that certain mitigation measures will be incorporated to prevent the occurrence of any significant adverse effect on the environment. The current proposal will incorporate the same mitigation measures defined in the Final EIR, in addition to any additional mitigation required by the First and Second Addendum to the Final EIR.
11. A supplemental traffic analysis prepared for this project demonstrates that there would be no new traffic impacts. The proposed project would only impact two of the four intersections identified in Final EIR.
12. Title 20 (Zoning Code) of the San Jose Municipal Code provides that the Planning Commission may issue a development permit subject to such conditions reasonably necessary to secure the purposes of the Zoning Code, including limitations on use.
13. The Commercial Design Guidelines recommend that buildings be placed near the intersection of existing streets to anchor the corner.
14. The project will provide a substantial trellis element located substantially closer to the intersection than the building currently shown on the proposed plans.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The project complies with the City's Riparian Corridor Policy.
4. The project complies with the City's Policy for Development within Proximity of High Pressure Gas Pipelines.
5. The proposed project is in compliance with the California Environmental Quality Act.
6. The proposed project conforms to the City of San José Evergreen Area Development Level of Service Policy.
7. The proposed project is in compliance with the intent of the City's Commercial Design Guidelines.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the

Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Previous Conditions.** All of the conditions of the previously approved Conditional Use Permit File No. CP 01-12-105 shall remain unchanged and in full force and effect unless such conditions are specifically modified or deleted in this Amendment.
2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, " Beshoff Motorcars," dated May 1, 2002, last revised on September 10, 2002, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24).
3. **Sign Design.** Sign design and location, as delineated on the approved plan set is hereby approved and constitutes the project's entire sign program.xc
4. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the requirements (3-14952) listed in the previous Conditional Use Permit (CP01-12-105) to the satisfaction of the Director of Public Works.
 - a. An updated traffic analysis for this project was submitted by Fehr & Peers Associates on September 19, 2002. The proposed project conforms to the City of San José Evergreen Area Development Level of Service Policy, with the following traffic mitigation: *the addition of a second northbound left-turn pocket to the intersection of Capitol Expressway and Ocala Avenue, and the restriping/reconfiguration of the westbound Capitol Avenue approach to Capitol Expressway to provide two exclusive left-turn lanes, one shared through/left-turn lane, and one right-turn lane.* An encroachment permit for the above referenced improvement to Capitol Expressway and Ocala Avenue and Capitol Expressway and Capitol Avenue is required by the County of Santa Clara Roads and Airports Department prior to the issuance of a Public Works Clearance.
5. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Permit Adjustment.* Improvements as identified in condition #8-“Permit Adjustment Required” shall be incorporated into the final site/building design.
 - b. *Construction Plans.* This permit file number, CPA01-105-01, shall be printed on all construction plans submitted to the Building Division.
 - c. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - d. *Americans With Disabilities Act.* The applicant shall provide appropriate access as

required by the Americans With Disabilities Act (ADA).

6. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend structures, conditions or restrictions of this Conditional Use Permit incorporated by reference in this Permit in accordance with Section 20.44.200 of the San José Municipal Code.
7. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
8. **Permit Adjustment Required.** The developer shall secure and agree to implement a Permit Adjustment that addresses the following project design issues to the satisfaction of the Director of Planning prior to the issuance of Building Permits.
 - a. *Restaurant Building Site.* A Permit Adjustment shall be filed to finalize the building architecture and site layout. The restaurant building site shall be reoriented toward the street and accommodate a site design with just one double-loaded parking aisle separating the building from the street. The restaurant will continue to share driveway access, but the site shall be designed so that the restaurant, including parking, remains identifiably separate from the automobile dealership and avoids significant dead end parking aisles.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit Amendment shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit Amendment. The date of adoption is the date the Resolution granting this Conditional Use Permit Amendment is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit Amendment may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit Amendment was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.